A

BEE BAK LENG

v.

MENTERI DALAM NEGERI, MALAYSIA & ORS

B

HIGH COURT MALAYA, ALOR SETAR
SOFIAN ABD RAZAK J
[CRIMINAL APPLICATION NO: 44-08-2009]
5 JANUARY 2010

C ***PREVENTIVE DETENTION:*** *Detention order - Application for habeas corpus - Whether there was procedural non-compliance - Validity of detention order - Whether Minister correctly applied his mind in issuing detention order - Whether applicant deprived of his personal liberty not in accordance with law - Emergency (Public Order and Prevention of Crime)*
D *Ordinance 1969, s. 4(1) - Federal Constitution, art. 5(1)*

CONSTITUTIONAL LAW: *Fundamental liberties - Preventive detention - Application for habeas corpus - Whether there was procedural non-compliance - Validity of detention order - Whether Minister correctly*
E *applied his mind in issuing detention order - Whether applicant deprived of his personal liberty not in accordance with law - Emergency (Public Order and Prevention of Crime) Ordinance 1969, s. 4(1) - Federal Constitution, art. 5(1)*

This was an application by the applicant, detained pursuant to a
F detention order (for a period of two years) issued by the Minister of Home Affairs ('Minister') and made under s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('Ordinance'), for a writ of *habeas corpus*. The applicant advanced the following grounds to challenge the detention order: (i) that the
G allegations of criminal activities stipulated therein were so remote and irrelevant, and that the detention order was issued after more than six years thereafter; (ii) that the Minister did not address his mind to the relevant limbs as stipulated in s. 4(1) of the Ordinance; and (iii) that the respondents had breached art. 5(1) of
H the Federal Constitution ('FC') *ie*, deprived the applicant of his personal liberty not in accordance with the law.

Held (dismissing the application):

I **(1)** After the amendment to the Ordinance in 1989, there was no requirement that a detention order may only be made within a certain period from the time of the alleged criminal activities.

In any event, if there were irregularities at the time the applicant was arrested by the police, on the law, the legality of the arrest and detention by the police was not a condition precedent to making the detention order against the applicant under s. 4(1) of the Ordinance. *Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* (foll); *Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* (foll). (paras 16)

(2) On the facts of this case, the Minister had applied his mind and thoughts to the correct limbs *ie*, s. 4(1)(b) and (c) of the Ordinance. This court was satisfied that Minister had applied the subjective test to his satisfaction when he decided to issue the detention order against the applicant. A detention order is issued based on the prescribed form and it stipulates the three reasons the Minister may rely on for the issuance of the detention order. At the end of each paragraph indicating the reasons for issuance of the detention order is an asterisk enabling the Minister to delete the reason that is not applicable in respect of the applicant's grounds for detention. In the instant case, the Minister had deleted and initialled the first ground as inapplicable to the applicant when he issued the detention order. (paras 20, 25 & 26)

(3) The preventive laws under which the applicant was detained provides for procedures and rules. The complaint alleged that there had been irregularities at the time of his arrest and detention prior to the issuance of the detention order by the Minister. On this issue, as mentioned above, the law is quite settled in that the legality of the arrest and detention by the police prior to the issuance of the detention order by the Minister was not a condition precedent to the making of the said order against the applicant under s. 4(1) of the Ordinance. In regard to the procedure applicable before the issuance of the detention order by the Minister, this court, after perusing the relevant and pertinent affidavits-in-reply, was of the considered view that the allegation that the applicant was not detained in accordance with the law was without basis. (paras 30, 31 & 32)

Case(s) referred to:

A Chandra Segaran Anggapan v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2002] 1 LNS 169 HC ***(refd)***

Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister Of Home Affairs), Malaysia [1969] 1 LNS 65 FC ***(refd)***

Kerajaan Malaysia & Ors v. Nasharuddin Nasir [2004] 1 CLJ 81 FC ***(refd)***

Kiong Ping Moon v. Timbalan Menteri Keselamatan Dalam Negeri & 2 Ors [2005] 1 LNS 300 HC ***(refd)***

Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] 3 CLJ 914 FC ***(foll)***

Lee Kwan Woh v. PP [2009] 5 CLJ 631; [2009] CLJ JT(3) FC ***(refd)***

Menteri Ehwal Dalam Negeri & Anor v. Lee Gee Lam & Another Case [1993] 4 CLJ 336 SC ***(refd)***

Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2005] 4 CLJ 613 FC ***(foll)***

Murugan Palanisamy & Ors v. Deputy Minister of Home Affairs & Ors [2000] 1 CLJ 147 HC ***(refd)***

Re Datuk James Wong Kim Min; Minister Of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min [1976] 1 LNS 129 FC ***(refd)***

Yap Chin Hock v. Minister of Home Affairs & Anor & Other Cases [1989] 2 CLJ 860; [1989] 2 CLJ (Rep) 673 HC ***(refd)***

Yit Hon Kit v. Minister of Home Affairs, Malaysia [1986] 1 LNS 121 HC ***(refd)***

Legislation referred to:

Emergency (Public Order and Prevention of Crime) Ordinance 1969, ss. 3(2), 4(1)(b), (c), 5(2), 6(1)

Federal Constitution, arts. 5(1), 150(6)

Penal Code, ss. 302, 304

Restricted Residence Act 1933, s. 2(ii)

For the applicant - Jegadeeson Thavasu; M/s Jega Kumar & Partners

For the respondents - Mohd Azlan Shah Mohd Allias SFC

Reported by Suresh Nathan

JUDGMENT

Sofian Abd Razak J:

[1] This is an application (encl. 1) by Bee Bak Leng (hereinafter called 'the applicant') for a writ of *habeas corpus ad subjiciendum*. The applicant is presently detained at the Pusat Pemulihan Akhlak, Simpang Rengam, Johor by a detention order dated 22 October 2008 issued by the Honourable Minister of Home Affairs

(hereinafter called 'the Honourable Minister') and made pursuant to s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (hereinafter called 'the Ordinance') The detention Order is for a period of two (2) years commencing 22 October 2008.

[2] The applicant advanced three grounds to challenge the detention order which will be dealt with *in seriatim*:

1) That there was procedural non-compliance with regard to the delay by the police in executing the warrant of arrest and the issuance of the detention order by the Honourable Minister and the reasons for the said arrest and detention;

2) That there was procedural non-compliance with regard to the fact that the Honourable Minister did not apply his mind to the subsections 4(1)(b) and (c) of the Ordinance;

3) That there was procedural non-compliance with regard to the contravention of art. 5(1) of the Federal Constitution.

[3] The court on 10 December 2009 after perusing the affidavits filed herein and after considering the written and hearing oral submissions by both parties, dismissed the applicant's application (encl. 2) and hence this appeal.

[4] The applicant in his affidavit in support of the application (encl. 2) had given three (3) reasons upon which he challenges the said order on procedural non-compliance. The Federal Court in *Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914 Abdul Hamid Mohamad FCJ (as his lordship then was) delivering the judgment of the court at pp. 921-922 had this to say:

> The Ordinance was amended by the Emergency (Public Order and Prevention of Crime) (Amendment) Act, 1989 (Act A740) which came into force on the 24th August 1989 (Similar amendments were also made to the ISA 1960 and DD (SPM) Act 1985 by Act A739 and Act 738, restricted challenges to detention orders made by the Minister under s. 4(1) of the Ordinance to grounds of non-compliance with any procedural requirement and nothing else.
>
> His lordship further stated that (at pp 930-931):
>
> ... In our view, Courts must give effect to the amendments. That being the law, it is the duty of the Courts to apply them. So in a *habeas corpus* application where the detention Order of the Minister made under s. 4(1) of the Ordinance or, for that matter, the

A equivalent sections in s. 4(1) of the Ordinance or, for that matter, the equivalent in sections in ISA 1960 and DD (SPM) Act, 1985, the first thing that the Courts should do is to see whether the ground forwarded is one that falls within the meaning of procedural non-compliance or not. To determine the question, the Courts
B should look at the provisions of the law or the rules that lay down the procedural requirements. It is not for the Courts to create procedural requirements because it is not the function of the Courts to make laws or rules. If there is no such procedural requirement then there cannot be non-compliance thereof. Only if there is that there can be non-compliance thereof and only then that the Courts
C should consider whether, on the facts, there has been non-compliance ...

First Issue

D **[5]** According to the applicant, the averment as stated in the grounds to justify his arrest dated 22 October 2008 by the Honourable Minister was frivolous, unfounded and without any legal basis namely:

E (a) that towards the end of 2000 at a coffeeshop bearing an address No: 898, Jalan Ong Yi How, Butterworth, Penang, the applicant was alleged to have joined a secret society called 'Pneh' with a membership fee of RM30. The said secret society was involved in various criminal activities in the vicinity of Butterworth, Penang. It was further alleged that in mid 2002 at
F about 5pm the applicant became a member of the secret society at a rubber estate, the locality of which was unknown, together with about 100 other members.

G (b) that the applicant on or about 17 May 2006 at about 3.15am in front of a coffeeshop namely Swee Hua and within the vicinity of Kedai Kopi Guan Seng, Jalan Raja Uda, Butterworth, Penang together with four (4) other accomplices still at large and with a common intention and armed with a parang, had attacked one Chinese man named Ooi Cheng Hoe, NRIC No:
H 610709-07-5463 causing his death. It was further alleged that the applicant had then disposed of traces of evidence used in the said attack namely four (4) parang, four (4) masks and one (1) false registration plate number namely WEJ 5230 into a river along Jalan Permatang Pauh, Butterworth, Penang.

I

First Issue

[6] It was the contention of the learned counsel for the applicant that the reasons for the issuance of the detention order was frivolous, unfounded and without any legal basis. The alleged factual statements refers to dates which were too remote, vague, and irrelevant in relation to the time and period the applicant was first arrested by the police and the subsequent issuance of the detention order by the Honourable Minister on 22 October 2008. It was further alleged the dates referred to by the Honourable Minister to justify the detention were dates in the year 2000 of whom the applicant was alleged to have become a member of the secret society called 'Pneh'. In mid 2002 an induction ceremony to be a member of the secret society was held, attended by the applicant together with 100 other members. Furthermore it was alleged that on 17 May 2006 the applicant together with four (4) others who were still at large had assaulted one Ooi Cheng Hoe NIRC No: 610709-07-5463 who had succumbed to his injuries and died. The applicant and the four (4) others had disposed of exhibits pertaining to the said assault. It was argued that if the allegations were true and correct then the respondent should not have waited for six (6) years to arrest him. It was also argued that there had been a long delay from the time of his first and last known act of criminal activities to the time the detention order was issued.

[7] The learned counsel referred to the case of *Kiong Ping Moon v. Timbalan Menteri Keselamatan Dalam Negeri & 2 Ors* [2005] 1 LNS 300 where the court held that the police reasoning about the delay in executing the arrest and the detention warrant against the applicant because the applicant had disappeared is in doubt. The court in the said case further held that the second delay was due to the Deputy Minister delay when carrying out the said order under s. 2(ii) of the Restricted Residence Act 1933.

[8] On this issue, the learned Federal Counsel submitted that under preventive law and in *habeas corpus* applications, any irregularity during the arrest and detention is an irrelevant allegation and has become academic after the detention order has been issued by the Honourable Minister. Cases cited by the learned Federal Counsel on this issue are *Lee Kew Sang v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 3 CLJ 914 and *Mohd Faizal Haris v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2005] 4 CLJ 613.

A **Second Issue**

[9] The learned counsel for the applicant submitted that the Honourable Minister did not address his mind to the relevant limbs under which he had acted. There was some doubt as to which
B particular limb the Honourable Minister applied his mind to or whether he applied his mind to both the limbs together in grounding his order, the benefit of the doubt must be given to the *detenu*. Learned counsel for the applicant cited the cases of *Menteri Ehwal Dalam Negeri & Anor v. Lee Gee Lam & Another Case* [1993]
C 4 CLJ 336 and *Murugan Palanisamy & Ors v. Deputy Minister of Home Affairs & Ors* [2000] 1 CLJ 147.

[10] In its reply the learned Federal Counsel submitted that the submission by learned counsel for the applicant is without any merits or legal basis. In *habeas corpus* proceedings, the question
D whether it is necessary that a person be detained is a matter for the personal or subjective satisfaction of the executive authority which in this case the Honourable Minister having seen the police report that the applicant's activities had threatened national security. Cases
E referred to are as follows:

a) *Karam Singh v. Menteri Hal Ehwal Dalam Negeri (Minister Of Home Affairs), Malaysia* [1969] 1 LNS 65 FC;

b) *Kerajaan Malaysia & Ors v. Nasharuddin Nasir* [2004] 1 CLJ 81;

F **Third Issue**

[11] It was submitted that the respondents had breached art. 5(1) of the Federal Constitution in that "No person shall be deprived of his life or personal liberty save in accordance with the law." In the
G affidavit in support of encl. 1 at para. 22, the applicant averred that if he was involved in an assault of one Ooi Cheng Hoe NIRC No: 610709-07-5463 and thereby causing his death, then the applicant should be charged for murder under s. 302 or s. 304 for manslaughter of the Penal Code respectively. However this was not
H done and therefore the applicant has been deprived of his personal liberty and detained without trial and this contravenes art. 5(1) of the Federal Constitution.

I

[12] Learned counsel for the applicant cited the case of *Lee Kwan Woh v. PP* [2009] 5 CLJ 631; [2009] CLJ JT(3) where Gopal Sri Ram FCJ at p. 645; p. 11 had this to say namely:

> It is a fundamental right guaranteed by art. 5(1) of the Federal Constitution that a person's life (in the widest sense) or his or her personal liberty (in its widest sense) may not be deprived save in accordance with State action that is fair both in point of procedure and substance. Whether an impugned State action is substantive or procedurally fair must depend on the fact pattern of each case. However, when the principle is applied to a criminal case, what it means is that an accused has a constitutionally guaranteed right to receive a fair trial by an impartial tribunal and to have a just decision on the facts. If there is an infraction of any of these rights, the accused is entitled to an acquittal.

[13] Learned Federal Counsel submitted that if there is any inconsistency in any of the provisions in the Federal Constitution in particular art. 5(1), the Emergency proclamation as stated in art. 150 prevails. Therefore in the instant case since the detention of the applicant is made under the preventive laws then it shall prevail over art. 5(1).

The Finding Of The Court

[14] On the issue that the allegations of the criminal activities as stipulated therein were so remote, irrelevant and that the first and the last of the applicant's alleged criminal activities were in 2000, 2002 and 2006 respectively. It was further alleged the detention order was issued after more than six years thereafter.

[15] This question was posed in the case of *Yit Hon Kit v. Minister of Home Affairs, Malaysia* [1986] 1 LNS 121 and the court held *inter alia* that the criminal activities alleged against the applicant were too remote in point of law to justify the making of the order under s. 4(1) of the Ordinance. It was a pre-amendment case.

[16] The court is of the considered view that after the amendment to the Ordinance in 1989 (Act A740) which came into force on 24 August 1989 there was no requirement that the detention order may only be made within a certain time from the time of the alleged criminal activities. This was stated in the affirmative by the Federal Court in *Lee Kew Sang (supra)* at p. 934.

In any event if there were irregularities at the time when the applicant was arrested by the police but on the law as stated in the cases of *Lee Kew Sang (supra)* and *Mohd Faizal Haris (supra)*, the court is of the considered view that the legality of the arrest and detention by the police is not a condition precedent to making the detention order against the applicant under s. 4(1) of the Ordinance.

[17] With regard to whether the Honourable Minister had addressed his mind to the relevant limbs as stipulated in s. 4(1) of the Ordinance, it is trite law that the three limbs upon which the Honourable Minister may ground his reasons for detaining a person. The said section is reproduced here for easier reference:

> **4. Power to order detention.**
>
> (1) If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to the public order it is necessary that that person should be detained, or that if it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained, the Minister shall make an order (hereinafter referred to as a "detention order") directing that that person be detained for any period not exceeding two years.

[18] In the case before the court, the Honourable Minister had stated in the detention order dated 22 October 2008 (exh. "BBL1") that his reasons for detaining the applicant was for the purpose of:

> (b) menghapuskan kekerasan*
>
> (c) mencegah jenayah melibatkan kekerasan*

[19] The Honourable Minister in his affidavit affirmed on 4 September 2009 at paras 7 and 8 had stated that he had addressed his mind and thoughts to the correct limbs of s. 4(1) of the Ordinance when issuing the detention order. I reproduced *in extenso* the whole of the said paragraphs for easier reference.

> 7. Selanjutnya, pada 22-10-2008 juga saya telah mengarahkan pegawai saya, Azreen Haniza binti Abdul Hai, untuk menyediakan Perintah Tahanan tersebut serta penyataan mengenai alasan-alasan yang atasnya perintah itu dibuat dan pengataan-pengataan fakta yang atasnya Perintah itu diasaskan yang bersesuaian dengan keputusan saya supaya Pemohon ditahan mulai 22-10-2008. Lanjutan daripada

arahan tersebut, Azreen Haniza binti Abdul Hai telah mengemukakan Perintah Tahanan tersebut serta penyataan mengenai alasan-alasan yang atasnya perintah itu dibuat dan pengataan-pengataan fakta yang atasnya Perintah itu diasaskan seperti yang dikehendaki oleh saya. Setelah disemak, saya dapati butiran-butiran pada Perintah Tahanan tersebut yang telah disediakan itu adalah bersesuaian dengan kehendak keputusan saya yang memerintahkan supaya Pemohon ditahan iaitu bagi tujuan menghapuskan kekerasan atau mencegah jenayah melibatkan kekerasan. Dalam hal berkaitan Pemohon, saya menyatakan bahawa setelah meneliti laporan dan dokumen-dokumen yang terkandung dalam kes fail berkenaan dengan aktiviti-aktiviti Pemohon, saya telah menggunakan minda saya dan saya telah berpuas hati bahawa Pemohon adalah merupakan seorang ahli kumpulan kongsi gelap 'Pneh' yang terlibat dalam kegiatan jenayah berunsur kekerasan. Saya berpuas hati bahawa penahanan perlu dibuat ke atas Pemohon dengan tujuan menghapuskan kekerasan atau mencegah jenayah melibatkan kekerasan. 8. Seterusnya, saya mendapati perenggan (a) pada Perintah Tahanan yang disediakan telah sedia dipotong dan ia bersesuaian dengan keputusan saya yang tujuan penahanan Pemohon bukanlah untuk mencegah daripada melakukan perbuatan dengan apa-apa cara yang memudaratkan ketenteraman awam. Sebaliknya ia adalah atas tujuan untuk menghapuskan kekerasan atau mencegah jenayah melibatkan kekerasan. Saya telah membuat penandaan ringkas kepada Perintah itu dibuat dan perenggan (a) yang dipotongkan sebagai pengesahan bahawa pemotongan tersebut adalah atas kehendak dan keputusan saya sendiri. Seterusnya, saya menurunkan tandatangan saya pada Perintah Tahanan tersebut serta mengisi tarikh. Saya juga telah mengarahkan Azreen Haniza binti Abdul Hai untuk menurunkan tandatangan beliau keatas alasan-alasan dan pengataan-pengataan fakta yang atasnya Perintah itu dibuat dan beliau kemudiannya mematuhi arahan saya itu dengan menurunkan tandatangan beliau keatas dokumen tersebut.

[20] On this issue and having regard to paras 7 and 8 aforesaid, I am satisfied that the Honourable Minister had correctly applied his mind and thoughts to the correct limbs ie, subsection s. 4(1)(b) and (c) of the Ordinance. I am satisfied that the Honourable Minister had applied the subjective test to his satisfaction when he decided to issue the detention order against the applicant.

[21] In *Yap Chin Hock v. Minister of Home Affairs & Anor & Other Cases* [1989] 2 CLJ 860; [1989] 2 CLJ (Rep) 673; the court *inter alia* held that:

(7) The subjective satisfaction of the Minister cannot be questioned.

[22] In *Karam Singh, supra* where Suffian FCJ (as his lordship then was) who wrote the main judgment said, *inter alia*:

> ... When the power to issue a detention order has been made to depend on the existence of a state of mind in the detaining authority, which is purely a subjective condition, so as to exclude a judicial inquiry into the sufficiency of the grounds to justify the detention, it would be wholly inconsistent to hold that it is open to the court to examine the sufficiency of the same grounds to enable the person detained to make a representation ...
>
> ... Finally, in my opinion, it is not for a court of law to pronounce on the sufficiency, relevancy or otherwise of the allegations of fact furnished to him.

[23] In *A Chandra Segaran Anggapan v. Timbalan Menteri Dalam Negeri Malaysia & 2 Ors* [2002] 1 LNS 169 the court held that the second limb in s. 4(1) of the Ordinance can be split into two (2) sub-limbs respectively namely the suppression of violence and the prevention of crimes involving violence. Syed Helmy JC (as his lordship then was) further stated as follows: "based on the disjunctive interpretation of the word "or" appearing in s. 4(1) of the Ordinance, I am of the considered view that the second limb therefore can be subdivided further into two and separate sub-limbs, namely the "suppression of violence" and the "prevention of crimes involving violence."

[24] In *Mohd Faizal Haris, supra* the court held that in view of the subjective nature of the exercise of discretion by the Minister in ordering detention, the court is not to concern itself with the vagueness, sufficiency or relevancy of the grounds of detention. Thus, even if the report of investigation is prepared as the result of an illegal arrest the weight to be attached to it is a matter exclusively within the purview of the Minister. The consideration of a statement made by an illegally detained person cannot therefore be prohibited. The result is that the legality of the detention of a person under s. 3(2) is not a condition precedent to the making of a detention order against him under s. 6(1). A detention order can be made against a person under s. 6(1) even when his detention under s. 3(2) was irregular.

[25] It is to be noted that a detention order is issued based on the prescribed form and it stipulates the three (3) reasons the Honourable Minister may ground his reasons for the issuance of the detention order. At the end of each paragraph indicating the reasons for issuance of the detention order is an asterisk which enables the Honourable Minister to delete the reason that is not applicable in respect of the applicant's ground for detention.

[26] In the case before the court, the Honourable Minister had deleted and initialled the first ground as inapplicable to the applicant when he issued the detention order.

[27] With regard to the third issue raised, that the respondent had breached the art. 5(1) of the Federal Constitution, I find that the learned Federal Counsel had missed the essence of the issue here. The question before this court was whether there is any breach of art. 5(1) in that whether the applicant had been deprived of his personal liberty in accordance with the law. Reference to art. 150(6) of the Constitution is in respect of proclamation of emergency by the Yang di-Pertuan Agong. In my view it is not applicable here because it concerns the provision of any ordinance promulgated under this article and no provision of any Act of Parliament which is in force and which declares that the law appears to be invalid on the ground of inconsistency with any provision of this Constitution shall be applicable. Here we are not dealing with any provision of any Act of Parliament which is in force and invalid on ground of inconsistency with any provision of this Constitution.

[28] A person such as the applicant who is detained is deprived of his personal liberty and such deprivation could only be upheld if it is carried out in accordance with the law. In this respect the applicant may challenge the detention order if there was any procedural non-compliance. In *Re Datuk James Wong Kim Min; Minister Of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min* [1976] 1 LNS 129 FC, Lee Hun Hoe, CJ (Borneo) (as his lordship then was) stated in the following words:

> In a matter so fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty. The material provisions of the law authorizing detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must be liberally interpreted. Where

A the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith. Where personal liberty is concerned an applicant in applying for a writ of *habeas corpus* is entitled to avail himself of any technical defects which may invalidate the order which deprive him of his liberty.

B

[29] At the risk of repetition, I reproduced a passage from *Lee Kew Sang v. TMDNM (supra)* where the court said:

To determine the question, the Court should look at the provisions
C of the law or the rules that lay down the procedural requirements. It is not for the Court to create procedural requirements because it is not the function of the Court to make laws or rules. If there is no procedural requirement then there cannot be non-compliance thereof.

D **[30]** In the instant case the preventive laws under which the applicant was detained provides for procedures and rules. The complaint alleged that there have been irregularities at the time of his arrest and detention prior to the issuance of the detention order by the Honourable Minister. On this issue, the law is quite settled
E in that the legality of the arrest and the detention by the police prior to the issuance of the detention order by the Honourable Minister is not a condition precedent to the making of the said order against the applicant under s. 4(1) of the Ordinance.

F **[31]** In regard to the procedure applicable before the issuance of the detention order by the Honourable Minister, the court has perused the affidavits in reply namely:

(a) The Honourable Minister had stated in his affidavit in reply at
G para. 6 affirmed on 4 September 2009 that *inter alia* had received the applicant's file together with the documents pertaining to the arrest, detention and investigation carried out by the police. The Honourable Minister was satisfied that upon perusing the applicant's file, that the applicant be detained
H under s. 4(1) of the Ordinance for a period of two (2) years commencing 22 October 2008 at the Pusat Pemulihan Akhlak Simpang Renggam, Johor.

(b) In paras 7 and 8 of the said affidavit in reply, the Honourable Minister had stated that before issuing the detention order, he
I had addressed his mind to the relevant limbs as stipulated in s. 4(1) of the Ordinance namely limbs (b) and (c) respectively.

The Honourable Minister had deleted limb (a) of the Ordinance and had initialled it. He was satisfied that upon perusing and directing his mind to reports of the applicant's criminal activities, in that the applicant was at all material time a member of the secret society called 'Pneh' and was involved in violent criminal activities.

(c) The Honourable Minister had further stated that a copy of the detention order dated 22 October together with the statements stating the grounds for his arrest was served on the applicant. This is borne by the affidavit of Chief Inspector Mohd Zulkefli bin Mohd Mukhtar that the detention order was served on the applicant on 22 October 2008 at about 10.20pm at the IPD Seberang Perai Utara, Penang.

(d) The contents of the detention order and the statements stating the grounds for the said detention was explained to the applicant by D/ Kpl Chong Piang Yee in Mandarin. The applicant was also informed by D/Kpl Chong Piang Yee of his rights to make representation to the Advisory Board pursuant to s. 5(2) of the Ordinance and in fact on the reversed of detention order, the applicant had admitted that he had understood the contents of the detention order and the statements relating to the grounds of the detention order by endorsing his signature on it.

(e) The applicant's representation before the Advisory Board was heard on 23 December 2008 at the Pusat Pemulihan Simpang Renggam which was within the three (3) months period as stipulated therein.

[32] Finally on this issue and based on the reasons as adumbrated above, the court was of the considered view, that the allegation that the applicant was not detained in accordance with the law was without basis and dismissed it.

[33] In all the circumstances, the application for *habeas corpus* is dismissed.